IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.Nos.34611, 34770, 34775 and 34959 of 1997
DATED 18-4-2007

W.P.No.34611 of 1997

BETWEEN
M/s.Vinoda A/c.

.. Petitioner

And
The Assistant Commissioner of Labour-Cum-Authority
Under the Payment of Wages Act, Khammam and 2 others.

.. Respondents

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

W.P.Nos.34611, 34770, 34775 and 34959 of 1997

ORDER:

Since a common question arises for consideration in all these four writ petitions, they were heard together and are now being disposed of by this common order.

Heard Sri B.Vijayasen Reddy, learned counsel for the petitioners and Sri A.K.Jayaprakash Rao, learned counsel appearing on behalf of the respondents in W.P.Nos.34770, 34775 of 1997.

Aggrieved by the order of the Assistant Commissioner of

Labour-cum-the Authority under the Payment of Wages Act directing the petitioners herein to deposit certain amounts towards overtime wages to the workmen, the present writ petition is filed.

Sri B.Vijayasen Reddy, learned counsel for the petitioners would contend that, while the 2nd respondent had initially filed an application before the 1st respondent under the Minimum Wages Act, 1948, the same was later converted as a case under Payment of Wages Act and was assigned with a new number and, therefore, the 1st respondent, who is the appellate authority under the Minimum Wages Act was not entitled to hear this application. Learned counsel would further contend that since none of the persons who were entitled to claim over time wages had submitted applications before the Authority under the Payment of Wages Act, an application filed at the instance of the 1st respondent could not be entertained.

In this context, it is useful to refer to Sections 15 and 17 of the Payment of Wages Act, which reads thus:

> Section 15: **claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims:- 1)** the State Government may by notification in the Official Gazette appoint a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a Stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages or delay in payment of wages, of persons employed or paid in that area, including all

matters incidental to such claims:

Provided that where the State Government considers it necessary so to do , it may appoint more than one authority for any specified area and may by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):

provided that every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from date on which the payment of the wages was due to be made as the case may be.

Provided further that any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

Section 17:**Appeal: 1)** An appeal against an order dismissing either wholly or in part an application made under sub-section (2) of Section 15 or against a direction made under sub-section (3) or sub-section (4) of that section may be preferred within thirty days of the date on which the order or direction was made in a Presidency-town before the Court of Small Causes and elsewhere before the District Court-

a) by the employer or other person responsible for the payment of wages under Section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, or such direction has the effect of imposing on the employer or the other person, financial liability exceeding one thousand rupees, or

b) by an employed person or any legal practitioner or any official of a registered trade union authorized in writing to act on is behalf or any Inspector under this Act, or

any other person permitted by the authority to make an application under sub-section (2) of Section 15, if the total amount of wages claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees, or

c) by any person directed to pay a penalty under sub-section (4) of Section 15.

……."

Under Section 15(2) where payment of wages has been delayed, the person himself or others, including the Inspector under the Payment of Wages Act, are entitled to apply to the authority for a direction under sub-section (3). Since Section 15(2) enables the Inspector, under the Payment of Wages Act, also to file an application, the application filed by the 2nd respondent was rightly entertained and adjudicated upon by the 1st respondent. The contention that the 2nd respondent had no jurisdiction to file an application under the Payment of Wages Act must, therefore, be rejected.

With regard to the petitioners' contention that the 1st respondent ought not to have entertained and adjudicated the application filed under the Payment of Wages Act since he is the appellate authority under the Minimum Wages Act, it is required to be noted that under Section 17, an appeal lies to the District Court. It is not in dispute that the 1st respondent is the primary authority under the Payment of Wages Act. Even assuming that he is the appellate authority under the Minimum Wages Act, it would not preclude him from entertaining an application to adjudicate the

same on merits under the Payment of Wages Act. This contention also must, therefore, be rejected.

Sri B.Vijayasen Reddy, learned counsel for the petitioners would, however, contend that the authority has no power to convert an application filed under the Minimum Wages Act into an application filed under the Payment of Wages Act.

A perusal of the impugned order would show that while the 2nd respondent had initially made an application under the Minimum Wages Act, the said application was converted into an application under the Payment of Wages Act and was assigned with a new number. On a query from the Court, learned counsel would fairly submit that the 2nd respondent was entitled to file a fresh application before the 1st respondent under the Payment of Wages Act. The mere fact that the 1st respondent had filed an application under the Minimum Wages Act, which was converted as an application under the Payment of Wages Act, does not make any difference, for, such an application could well have been considered as a fresh application under the Payment of Wages Act. In the present case, the application filed under the Minimum Wages Act was converted as an application under the Payment of Wages Act and was assigned with a new case number. No prejudice has been shown to have been caused to the petitioners on account of such conversion. This contention must also fail.

The writ petitions are accordingly dismissed. Needless to state that this order, dismissing the writ petitions, will not preclude the petitioners from availing such other remedies as are available to

them in law. No costs.

RAMESH RANGANATHAN,J

Dt: 18.4.2007
msv.